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Second-Parent Adoption: Overcoming Barriers to Lesbian Family Rights

Maxwell S. Peltz
Yale Law School

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SECOND-PARENT ADOPTION: OVERCOMING BARRIERS TO LESBIAN FAMILY RIGHTS

*Maxwell S. Peltz**

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Growing numbers of lesbian and gay couples in the United States are choosing to have families.¹ While figures vary considerably, sources estimate that nationwide, lesbian and gay parents are raising between six and fourteen million children.² Lesbians in particular are having children in increasing numbers, a trend commentators have termed the "lesbian baby boom."³ While many children raised by lesbian parents

* J.D. 1995, Yale Law School.

- 1. See Gina Kolata, *Lesbian Partners Find Means to Be Parents*, N.Y. TIMES, Jan. 30, 1989, at A13.
- 2. See Note, *Developments in the Law: Sexual Orientation and the Law*, 102 HARV. L. REV. 1508, 1629 (1989) (estimating that three million gays and lesbians in the United States are parents, and eight to ten million children are raised in gay or lesbian households (citing *ABA Annual Meeting Provides Forum for Family Law Experts*, 13 FAM. L. REP. (BNA) 1512, 1513 (Aug. 25, 1987))); Jayne Keedle, *Bringing Up Baby: Gay and Lesbian Parents Are Redrawing the Boundaries of the American Family*, NEW HAVEN ADVOC., Dec. 1, 1994, at 11 (estimating that six to fourteen million children are growing up in at least four million gay and lesbian households).
- 3. See, e.g., William A. Henry III, *Gay Parents: Under Fire and on the Rise*, TIME, Sept. 20, 1993, at 66. This article will focus primarily on lesbian parents, although many of the legal and socio-political issues facing gay male parents are essentially equiva-

were conceived or adopted in previous heterosexual relationships,⁴ a significant number are being conceived in lesbian relationships through artificial insemination—between five and ten thousand by some estimates.⁵

Advances in reproductive technologies and some ebbing in societal intolerance have made it easier for lesbian couples to have families of their own, yet these couples continue to face legal barriers. Because same-sex marriage is not permitted in any state,⁶ the nonbiological mother, or “co-parent,” is a legal stranger to her child, despite her involvement in planning for, raising, and supporting the child. Consequently, a number of co-parents have sought parental rights by petitioning courts for the adoption of their children.⁷

These petitions for so-called “second-parent adoption” have posed unique challenges for state courts. On the one hand, adoption is governed solely by statute,⁸ and no state statute explicitly permits second-

lent. See, e.g., *In re M.M.D. & B.H.M.*, 662 A.2d 837 (D.C. 1995) (granting joint adoption to a gay male couple).

4. Eloise Salholz, *The Future of Gay America*, NEWSWEEK, March 12, 1990, at 20 (estimating that three to five million lesbian and gay parents have had children in heterosexual relationships).
5. See Leslie Dreyfous, “Divorced” Lesbians and Gays Challenging Legal Definition of Parent, L.A. TIMES, Apr. 28, 1991, at A39 (estimating ten thousand); Jean Seligmann, *Variations on a Theme*, NEWSWEEK, Spec. Ed. Winter/Spring 1990, at 39 (five to ten thousand); Angela Smyth & Julia Brosnan, *Me and My Mums*, THE GUARDIAN, Nov. 14, 1994, at 10–11 (reporting that a recent survey found that one thousand children were born to lesbian women in San Francisco alone). For other sources suggesting even higher numbers, see Henry, *supra* note 3 (reporting on Pacific Reproductive Services, a San Francisco clinic, where more than 100 lesbians use the sperm bank each month); *Can Gays Make Good Parents?* (CNN television broadcast, Dec. 29, 1992) (reporting that lesbian women give birth to about five thousand children each year).
6. *Developments in the Law: Sexual Orientation and the Law*, *supra* note 2, at 1606.
7. The New York Court of Appeals cast the issue as follows:

Under the New York adoption statute, a single person can adopt a child. Equally clear is the right of a single homosexual to adopt. These appeals call upon us to decide if the unmarried partner of a child’s biological mother, whether heterosexual or homosexual, who is raising the child together with the biological parent, can become the child’s second parent by means of adoption.

In re Jacob, Nos. 195, 196, 1995 WL 643833, at *1 (N.Y. Nov. 2, 1995) (citation and footnote omitted).

8. ANGELA R. HOLDER, *LEGAL ISSUES IN PEDIATRICS AND ADOLESCENT MEDICINE* 204 (2d ed. 1985) (citing Stephen B. Presser, *The Historical Background of American Adoption*, 11 J. FAM. L. 143 (1972)). See also *In re Jacob*, 1995 WL 643833, at *2

parent adoption.⁹ In fact, many statutes contain substantial impediments to such arrangements.¹⁰ Further, courts are reluctant to invade legislative prerogatives in such statutory areas—particularly if their decisions would effectively legitimize an alternative family unit to which most of society remains hostile. On the other hand, courts face a fait accompli since the child is already with the lesbian couple. To deny the adoption petition would only harm the interests of the child,¹¹ an effect contrary to the general purpose and express provisions of most adoption statutes.¹²

An outcome of this conflict is that in recent years courts in roughly a dozen states and the District of Columbia have granted second-parent adoptions to lesbian and gay couples, overcoming statutory barriers by liberally interpreting provisions of adoption statutes in the best interests of the child.¹³ Yet these decisions have done more than simply create an additional avenue for adoption. Courts' recognition of second-parent adoption has conferred upon lesbian-headed family units

(citing *In re Eaton*, 305 N.Y. 162, 165 (1953) (noting that adoption law is "solely the creature of . . . statute")).

9. See *infra* text accompanying notes 25–26.

10. See *infra* text accompanying notes 23–26.

11. See *infra* text accompanying notes 16–26.

12. See, e.g., ILL. ANN. STAT. ch. 40, para. 1525 (Smith-Hurd 1980 & Supp. 1994) ("The best interests and welfare of the person to be adopted shall be of paramount consideration in the construction and interpretation of this [Adoption] Act.").

13. See, e.g., *In re M.M.D. & B.H.M.*, 662 A.2d 837 (D.C. 1995); *In re Petition of L.S. & V.L.*, Nos. A-269-90, A-270-90, 1991 WL 219598 (D.C. Super. Ct. Aug. 30, 1991); *In re Petition of K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995); *In re the Petition of E.S. &* R.L. to Adopt M.L.S.*, No. 90 Coa 1202, 1994 WL 157949 (Ill. Cir. Ct. Mar. 14, 1994); *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993); *Adoption of Susan*, 619 N.E.2d 323 (Mass. 1993); *Adoption of a Child by J.M.G.*, 632 A.2d 550 (N.J. Super. Ct. Ch. Div. 1993); *Adoption of Evan*, 583 N.Y.S.2d 997 (N.Y. Sur. Ct. 1992); *Adoption of Caitlin & Emily*, 622 N.Y.S.2d 835 (N.Y. Fam. Ct. 1994); *Adoptions of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271 (Vt. 1993); *In re Jacob*, Nos. 195, 196, 1995 WL 643833 (N.Y. Nov. 2, 1995); *Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. A.D. 1995). In addition, courts have reportedly granted second-parent adoptions in unpublished opinions in Alaska, California, Michigan, Minnesota, Oregon, Pennsylvania, Texas, and Washington. Janan Hanna, *Adoptions by Gays Face New Tests in Courts*, CHI. TRIB., Nov. 30, 1994, § 2, at 5.

But see *In re Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994) (denying second-parent adoption petition on statutory grounds); *Adoption of Baby Z* (Conn. P. Ct. [docket number blocked out] May 12, 1994) (denying second-parent adoption petition on statutory grounds) (appeal expected).

a degree of legal status denied by legislatures¹⁴ and opposed by a majority of society.¹⁵ This anomalous right emerges because the virtually unprotected family law rights of lesbians happen to converge with the highly protected interests of children. The result is that the former can ride the latter into legally recognized status. Nevertheless, the continued divergence between this new right and the views of the political and popular mainstream creates tension that may, in turn, yield opposing outcomes. In some jurisdictions the tension may abate as newly created legal norms generate social norms more tolerant of alternative family arrangements, thereby enforcing the family right. In other jurisdictions the tension may provoke the abrogation of lesbian and gay partners' newly created rights through legislative override or judicial overrule.

Part I of this Article will discuss some of the legal difficulties associated with co-parenting and why lesbian couples have sought second-parent adoptions. Part II will examine the particular statutory obstacles to second-parent adoptions and then analyze the various ways courts in several states have overcome these obstacles. Finally, Part III will discuss the implications of these decisions in terms of their creation of legal and social norms.

I. LEGAL DIFFICULTIES ASSOCIATED WITH CO-PARENTING

Suppose, for example, that a lesbian couple living together in a long-term, committed relationship decides to have a child. One of the women conceives a child through artificial insemination.¹⁶ The other woman participates in the birthing process, is present at the birth, and is equally involved in supporting and raising the child.¹⁷ This

14. See generally *Developments in the Law: Sexual Orientation and the Law*, *supra* note 2, at 1603-29; NATIONAL LAWYERS GUILD, *SEXUAL ORIENTATION AND THE LAW* §§ 1.01-.07 (Roberta Achtenberg et al. eds., 1994); WILLIAM B. RUBENSTEIN, *LESBIANS, GAY MEN, AND THE LAW* 77-154, 377 (1993).

15. See *infra* text accompanying note 65. See generally *HOMOPHOBIA: AN OVERVIEW* (John P. DeCecco ed., 1984) (containing empirical studies of attitudes toward homosexuality).

16. The following analysis is not limited to cases in which children have been conceived through artificial insemination. Nevertheless, in virtually all of the reported cases concerning second-parent adoption, the children were so conceived. *E.g.*, *In re Jacob*, Nos. 195, 196, 1995 WL 643833 (N.Y. Nov. 2, 1995); *Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. A.D. 1995).

17. See, e.g., *Adoptions of B.L.V.B. & E.L.V.B.*, 628 A.2d at 1272; *Adoption of Two Children by H.N.R.*, 666 A.2d at 536.

nonbiological co-parent is essentially a "legal stranger" to her own child.¹⁸ The child may not be eligible for the co-parent's disability, health, or life insurance benefits.¹⁹ If the biological mother dies or becomes incapacitated, the child would not automatically remain with the co-parent.²⁰ The surviving co-parent could lose custody of the child to the child's other biological parent—the donor—or to other relatives of the child, even if those relatives had no prior relationship with or ties to the child.²¹ Further, if the co-parent dies intestate, the child may not be able to inherit from her. And upon the co-parent's death, the child would also fail to qualify for the co-parent's social security benefits.²² Similarly, if the mothers split, nothing guarantees that the co-parent, without an adoptive or biological link to the child, could obtain custody or visitation rights, or have child support obligations.²³

While a couple could execute various legal instruments to address some of these problems,²⁴ none of these instruments give the nonbiological co-parent rights and obligations equal to those of the natural mother, nor do these instruments have the force of an adoption or guardianship.²⁵ For example, the natural parent could appoint the co-parent testamentary guardian of the child in the event of the natural mother's death. But even where a nomination of guardianship or

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18. Adoption of Tammy, 619 N.E.2d 315, 320 n.8 (Mass. 1993) (dictum).
 19. NATIONAL CENTER FOR LESBIAN RIGHTS, *supra* note 22, at 27. In one case, a couple decided to pursue a second-parent adoption petition when, after the natural mother lost her job, the co-parent's health insurer refused to include her children under her policy. *Two Gay Adoption Cases Go to Appeals Court*, N.Y. TIMES, Apr. 18, 1993, at 25.
 20. *Developments in the Law: Sexual Orientation and the Law*, *supra* note 2, at 1655.
 21. *Developments in the Law: Sexual Orientation and the Law*, *supra* note 2, at 1655.
 22. See 42 U.S.C. § 402(d)(1994); NATIONAL CENTER FOR LESBIAN RIGHTS, LESBIANS CHOOSING MOTHERHOOD: LEGAL IMPLICATIONS OF DONOR INSEMINATION AND CO-PARENTING 26 (Maria Gil de Lamadrid ed., 1991).
 23. See, e.g., Nancy S. v. Michele G., 279 Cal. Rptr. 212 (1991) (holding in a custody dispute between separated lesbian parents that the biological mother had sole right to custody); A.L. v. C.B., 829 P.2d 660 (N.M. Ct. App. 1992) (holding that lesbian co-parent does not have standing to seek visitation rights with the child that she and her former partner, the biological mother, had during their fourteen-year relationship); Alison D. v. Virginia M., 572 N.E.2d 651 (N.Y. 1991) (holding that although a co-parent had had a six year relationship with the child's biological mother and had jointly cared for and made decisions about the child, the co-parent had no legal standing to seek visitation with the child). See generally, Achtenberg, *supra* note 14, § 1.04[3][a], at 1-82 to 1-83.
 24. See generally NATIONAL CENTER FOR LESBIAN RIGHTS, *supra* note 22, at 20-24 (listing documents that protect the rights of the non-biological or non-adoptive parent); Achtenberg, *supra* note 14, § 1.04[3].
 25. See *Developments in the Law: Sexual Orientation and the Law*, *supra* note 2, at 1659.

conservatorship has been executed, a third party relative could still successfully challenge the co-parent's custody upon the natural mother's death.²⁶

Consequently, lesbian parents have sought second-parent adoptions whereby the nonbiological co-parent adopts the child without severing the biological parent's own parental rights and responsibilities.²⁷ However, women who petition for second-parent adoptions have encountered formidable legal and social barriers. They must convince a court to construe governing statutes in novel ways, creating a legal relationship to which much of society remains opposed.

II. OVERCOMING STATUTORY BARRIERS TO SECOND-PARENT ADOPTION

A. Statutory Barriers

An individual seeking a second-parent adoption faces a statutory catch-22. Normally, an adoption decree terminates the legal rights and obligations between the child and his or her natural parents and

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26. See *Adoption of Tammy*, 619 N.E.2d 315, 320 n.8 (Mass. 1993) (observing that although natural mother designated co-mother guardian of child in will, co-mother's custody of child could conceivably be contested in the event of natural mother's death, particularly by donor, members of donor's family, or members of natural mother's family) ("Absent adoption, [the co-mother] would not have a dispositive legal right to retain custody of [the child], because she would be a 'legal stranger' to the child."). See also Achtenberg, *supra* note 14, § 1.04[3][a], at 1-82. Nevertheless, a co-parent may be able to claim custody in the event of the death of or separation from the biological mother under the "psychological parent" theory. See *Developments in the Law: Sexual Orientation and the Law*, *supra* note 2, at 1655 (citing JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTEREST OF THE CHILD* 98 (1973) (defining psychological parent as an adult who, regardless of biological relationship to the child, "on a continuing, day-to-day basis . . . fulfills the child's psychological needs for a parent, as well as the child's physical needs.")).
27. See generally Elizabeth Zuckerman, *Second Parent Adoption for Lesbian-Parented Families: Legal Recognition of the Other Mother*, 19 U.C. DAVIS L. REV. 729 (1986) (urging judges to grant second-parent adoptions without requiring the natural parent to relinquish her rights and responsibilities); Sonja Larsen, Annotation, *Adoption of a Child by Same-Sex Partners*, 27 A.L.R.5th 54 (1995). Although I will discuss second-parent adoptions by lesbian partners of the biological parents, heterosexual partners have successfully petitioned for second-parent adoptions in some cases. See, e.g., *In re Jessica W.*, 453 A.2d 1297 (N.H. 1982) (granting adoption of illegitimate child by natural father); *In re A.J.J.*, 438 N.Y.S.2d 444 (N.Y. Sur. Ct. 1981) (granting adoption of child by natural father who refused to marry for political reasons); *In re Jacob*, Nos. 195, 196, 1995 WL 643833 (N.Y. Nov. 2, 1995) (granting second-parent adoption to heterosexual partner in one of two consolidated cases).

replaces them with similar rights and obligations between the child and the new adoptive parents.²⁸ Strictly applied, this regime would preclude second-parent adoption. A co-parent's adoption of her partner's child would terminate the natural mother's legal rights.²⁹ The only statutory exception to this automatic termination of the natural parent's rights is in the case of stepparent adoption: when the child is adopted by a legal parent's new spouse.³⁰ But this so-called stepparent exception, if literally construed, is unavailable to lesbian petitioners because the co-parent cannot be the legal "spouse" of the natural mother.³¹

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28. *See, e.g.*, MASS. ANN. LAWS ch. 210, § 6 (Law. Co-op. 1995) (providing that upon entry of an adoption decree, "all rights, duties and other legal consequences of the natural relation of child and parent shall . . . terminate between the child so adopted and his natural parents . . ."); N.Y. DOM. REL. LAW § 117(1)(a) (McKinney 1988 & Supp. 1994) (providing that upon adoption "the natural parents of the adoptive child shall be relieved of all parental duties toward and of all responsibilities for and shall have no rights over such adoptive child . . ."). *See generally* HOMER H. CLARK, JR., *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* § 21.1 (2d ed. 1987) (defining adoption as the legal process by which a child acquires parents other than her natural parents, and parents acquire a child other than their natural child).
 29. In addition, some statutes require that all adoptions other than by stepparents or blood relatives be placed through an agency. *See, e.g.*, CONN. GEN. STAT. § 45a-727(3) (1993). This would require that the biological mother first surrender her child to an agency before the child could be adopted by her and her partner. Yet there is no guarantee that the agency would not grant custody of the child to another couple. This provision has proved a formidable obstacle to second-parent adoption in the state. *See* Adoption of Baby Z (Conn. P. Ct. [docket number blocked out] May 12, 1994).
 30. *See, e.g.*, D.C. CODE ANN. § 16-312(a) (1981 & Supp. 1994) (requiring that upon adoption "[a]ll rights and duties" between the adoptee and his natural parents "are cut off, except that when one of the natural parents is the spouse of the adoptor [*sic*], the rights and relations as between adoptee, that natural parent, and his parents . . . are in no wise altered."); N.J. STAT. ANN. § 9:3-50(a) (West 1993 & Supp. 1994) (providing that "[t]he entry of a judgment of adoption shall terminate all relationships between the adopted child and his parents . . . provided, however, that when the plaintiff is a stepfather or stepmother of the adopted child and the adoption is consummated with the consent and approval of the mother or father, respectively, such adoption shall not affect or terminate any relationship between the child and such mother or father or any rights, duties or obligations based thereupon."); VT. STAT. ANN. tit. 15, § 448 (1989 & Supp. 1994) (providing "[t]he natural parents of a minor shall be deprived, by the adoption, of all legal right to control of such minor Notwithstanding the foregoing provisions of this section, when the adoption is made by a spouse of a natural parent, obligations of obedience to, and rights of inheritance by and through the natural parent who has intermarried with the adopting parent shall not be affected.").
 31. *See In re Angel Lace M.*, 516 N.W.2d 678, 684 (Wis. 1994) (holding that the stepparent exception did not apply to nonmarital partners).

*B. Overcoming Barriers through Liberal
Statutory Interpretation*

The only way a same-sex couple can obtain a second-parent adoption, therefore, is to convince a court to construe the existing adoption statute liberally in order to serve the best interests of the child involved. Although a general rule of statutory construction holds that statutes in derogation of the common law shall be strictly construed by the courts,³² adoption statutes have sometimes been an exception to this rule, either by explicit instruction or judicial construction. Some adoption statutes explicitly instruct that their provisions be construed liberally.³³ Where such an instruction does not exist, some courts have employed statutory purpose arguments to construe the statute liberally. They have reasoned that because the language and history of the statute are silent regarding the permissibility of adoption by the unmarried partner of the natural parent,³⁴ courts should broadly construe the statute to serve its overriding purpose: to promote and protect the child's best interests.³⁵ Consequently, when courts have found that a second-parent adoption would serve this purpose, they have liberally

32. CLARK, *supra* note 28, at § 21.4.

33. See, e.g., ILL. ANN. STAT. Ch. 40, para. 1524 (Smith-Hurd 1980 & Supp. 1994) ("This Act shall be liberally construed, and the rule that statutes in derogation of the common law must be strictly construed shall not apply to this Act."). See also *In re K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995) (applying this provision in holding second-parent adoption permitted by Illinois law); *Adoption of Two Children by H.N.R.*, 666 A.2d 535, 538 (N.J. Super. Ct. 1995) (noting "N.J.S.A. 9:3-37 requires that the 'act be liberally construed to the end that the best interests of children be promoted'"). But see *In re Angel Lace M.*, 516 N.W.2d at 681 n.3 (holding second-parent adoption not permitted by Wisconsin law notwithstanding similar statutory instruction that adoption act be construed liberally).

34. See, e.g., *Adoption of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271, 1273 (Vt. 1993) (noting that the relevant adoption provision was adopted in its present form in 1947 and that "[i]t is highly unlikely that the legislature contemplated the possibility of adoptions by same-sex partners, and the scant legislative history does not indicate that such adoptions were considered."); *In re L.S. & V.L.*, Nos. A-269-90, A-270-90, 1991 WL 219598, at *3 (D.C. Super. Aug. 30, 1991); *Adoption of Tammy*, 619 N.E.2d 315, 319 (Mass. 1993).

35. See *Adoption of Tammy*, 619 N.E.2d at 318; *In re K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995). See also *In re Jacob*, Nos. 195, 196, 1995 WL 643833, at *2 (N.Y. Nov. 2, 1995) ("What is to be construed strictly and applied rigorously in this sensitive area of the law . . . is legislative purpose as well as legislative language."). See generally Clark, *supra* note 28, at § 21.8, at 653 ("In adoption as in custody the ultimate standard for both agencies and courts is the best interests and welfare of the child.")

construed vague or ambiguous provisions in the statute to allow such an adoption.³⁶

As additional support for this interpretive approach, several courts have reasoned that changes in the societal context since the adoption laws were enacted require a liberal construction of the statutes to conform them to modern realities.³⁷ For example, a New York court considering a second-parent adoption petition observed:

The reality . . . is that most children today do not live in so-called 'traditional' 1950 television situation comedy type families with a stay-at-home mother and a father who works from 9:00–5:00. . . . It is unrealistic to pretend that children can only be successfully reared in an idealized concept of family, the product of nostalgia for a time long past.³⁸

Courts have held that such changes in societal patterns support a liberal interpretation of the statute for two general reasons. First, some assumptions underlying the existing laws are no longer valid or accurate. Therefore, particular provisions of the statute do not apply to the present situation and must be waived. For example, a District of Columbia court waived a termination provision, reasoning that the original purposes of the provision—to rationalize inheritance and protect disturbance of the adoptive parent-child relationship—did not apply to cases involving second-parent adoption.³⁹ In such cases, the court explained, these interests would not be disturbed by granting the adoption while preserving the natural parent's rights.⁴⁰

36. See *Adoption of Tammy*, 619 N.E.2d at 318; *Adoption of Caitlin & Emily*, 622 N.Y.S.2d 835, 838 (N.Y. Fam. Ct. 1994). See also discussion, *infra* part II.C.

37. This practice of interpreting old statutes in light of the present societal context has been termed "dynamic statutory interpretation" by William Eskridge. See William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 U. PA. L. REV. 1479, 1496–97 (1987). See also Heidi A. Sorensen, Note, *A New Gay Rights Agenda? Dynamic Statutory Interpretation and Sexual Orientation Discrimination*, 81 GEO. L.J. 2105 (1993).

38. *Adoption of Caitlin & Emily*, 622 N.Y.S.2d at 841. See also *Adoptions of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271, 1276 (Vt. 1993); *Adoption of a Child by J.M.G.*, 632 A.2d 550, 554–55 (N.J. Super. Ct. Ch. Div. 1993).

39. See *Adoption of Minor (T.)*, Nos. A-269-90, A-270-90, 1991 WL 219598, at *3–4 (D.C. Super. Aug. 30, 1991).

40. The court noted that the natural parent intended "to remain an active parent and [had] no desire that her child's right of inheritance from her be curtailed in any way." *Adoption of Minor (T.)*, 1991 WL 219598, at *3. Further, the court observed that adoption would affect no change in the relationship between the child and her natural or adoptive parent. *Adoption of Minor (T.)*, 1991 WL 219598, at *4.

Second, societal and demographic changes require adjustments in the overall statutory framework, rather than the imposition of anachronistic rules on a changed society. A New York family court reasoned that a dynamic interpretation of the existing adoption statute was required to accommodate growing numbers of households headed by unmarried parents, both homosexual and heterosexual.

With the myriad of reproductive techniques available to unmarried women for having children besides heterosexual intercourse . . . coupled with the elimination of the social stigma attached to having children "out of wedlock," it is obvious that there will be an increasing number of children similarly situated to Camilla [the adoptee], for whom legal protections will be sought through the adoption process. To suggest that adoption petitions may not be filed by unmarried partners of the same sex or opposite sex because the legislature has expressed a desire for these adoptions to occur in the traditional nuclear family constellation of the 1930s ignores the reality of what is happening in the population.⁴¹

Thus, construing the statute to require marriage as a precondition of adoption is incompatible with present realities and often at odds with the statutory aim of providing children with a stable, two-parent family.⁴²

C. Specific Statutory Approaches to Second-Parent Adoption

Courts have employed these justifications for liberal statutory interpretation to permit second-parent adoptions in two basic ways: "pseudo-stepparent adoption" and joint adoption.

41. *In re Camilla*, 620 N.Y.S.2d 897, 901-902 (N.Y. Fam. Ct. 1994) (citing recent census figures showing significant increase in "unmarried couple households" with children in the last two decades). *See also In re Jacob*, Nos. 195, 196, 1995 WL 643833, at *5 (N.Y. Nov. 2, 1995) (citing census figures indicating "fundamental changes . . . in the make-up of the family.").

42. *See Adoption of Evan*, 583 N.Y.S.2d, 997, 999-1001 (N.Y. Sur. Ct. 1992).

1. Pseudo-Stepparent Adoption

Courts have granted second-parent adoptions by permitting the co-parent to adopt as if she were a stepparent. This allows the co-parent to adopt without triggering the termination provision that would sever the natural parent's rights. The courts either have held that the termination provision is directory rather than mandatory,⁴³ or have declined to apply the provision altogether.⁴⁴

In reaching these conclusions, courts have reasoned that when legislatures enacted the termination provisions, they had not imagined that an unmarried, let alone same-sex, partner of the natural parent would petition for adoption.⁴⁵ Therefore courts should not now hold that the narrow stepparent exception is the exclusive circumstance occasioning a waiver of the termination provision.⁴⁶ Moreover, the purposes of the termination provision are inapplicable in the case of second-parent adoption.⁴⁷ To apply the provision to these cases, the courts have said, would yield unreasonable⁴⁸ and even ludicrous results⁴⁹ at odds with the statute's overarching purpose: protecting the child's best interests.⁵⁰

In some cases, courts have gone slightly further, reasoning that second-parent adoptions were analogous, or even equivalent, to stepparent adoptions. The courts have thereby imputed quasi-marital status to the lesbian couples.⁵¹ In *Adoption of Evan*, the court explained, "[t]he

43. See, e.g., *Adoption of Caitlin & Emily*, 622 N.Y.S.2d 835, 838 (N.Y. Fam. Ct. 1994); *Adoption of Minor (T.)*, Nos. A-269-90, A-270-90, 1991 WL 219598, at *3-4 (D.C. Super. Aug. 30, 1991).

44. See, e.g., *In re Jacob*, Nos. 195, 196, 1995 WL 643833, at *9 (N.Y. Nov. 2, 1995); *Adoption of Evan*, 583 N.Y.S.2d at 1000; *Adoptions of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271, 1275-76 (Vt. 1993); *Adoption of a Child by J.M.G.*, 632 A.2d 550, 553 (N.J. Super. Ct. Ch. Div. 1993).

45. See *In re Jacob*, Nos. 195, 196, 1995 WL 643833, at *10 (N.Y. Nov. 2, 1995).

46. See *Adoptions of B.L.V.B. & E.L.V.B.*, 628 A.2d 1271, 1274 (Vt. 1993); *In re Camilla*, 620 N.Y.S.2d 897, 902 (N.Y. Fam. Ct. 1994) ("Viewed in the context of the 1990s, step-parent adoption in nothing more than one form of second-parent adoption.").

47. See *supra* text accompanying note 37.

48. *Adoptions of B.L.V.B. & E.L.V.B.*, 628 A.2d at 1274.

49. *In re L.S.*, Nos. A-269-90, A-270-90, 1991 WL 219598, at *2 (D.C. Super. Ct. Aug. 30, 1991).

50. *In re L.S.*, 1991 WL 219598, at 2; *In re Jacob*, Nos. 195, 196, 1995 WL 643833, at *9 (N.Y. Nov. 2, 1995).

51. See Richard D. Mohr, *The Case for Gay Marriage*, 9 NOTRE DAME J.L. ETHICS & PUB. POL'Y 215, 236 n.63 (1995) (observing that gay marriage is gradually "coming into law through the back door" of second-parent adoption).

petitioners are a committed, time-tested life partnership. For Evan, they *are* a marital relationship at its nurturing supportive best and they seek second parent adoption for the same reasons of stability and recognition as any couple might."⁵² In a similar case in New Jersey, Judge Freedman, writing for the majority, asserted, "I am convinced that in this adoption, J.M.G. should be treated as a stepparent as a matter of common sense, and in order to protect the child's interests in maintaining her relationship with her biological mother."⁵³ In both of these cases, the courts essentially ruled that for the purposes of the statute, the parents *were* married. Still, the New Jersey court conceded, "[t]he court feels constrained by the state of the law from proclaiming J.M.G. an actual 'step-parent' given the fact that same-sex marriages are not legal in this state."⁵⁴

2. Joint Adoption

The second way courts have granted second-parent adoptions is by granting a joint adoption to both the co-parent and the natural parent. In *Adoption of Tammy*,⁵⁵ the Massachusetts Supreme Judicial Court overcame two statutory hurdles to grant a joint adoption petition by the natural mother and her partner. First, the adoption statute did not explicitly permit joint adoptions by unmarried people.⁵⁶ The statutory scheme provided only that married couples can jointly adopt⁵⁷ and that "a person" may adopt.⁵⁸ The court reasoned that according to a "legislatively mandated rule of statutory construction . . . '[w]ords importing the singular number may extend and be applied to several persons' " as

52. *Adoption of Evan*, 583 N.Y.S.2d 997, 999 (N.Y. Sur. Ct. 1992). *See also In re M.M.D. & B.H.M.*, 662 A.2d 837 (D.C. 1995) (applying the stepparent exception to a gay couple "by analogy").

53. *Adoption of a Child by J.M.G.*, 632 A.2d 550, 553 (N.J. Super. Ct. Ch. Div. 1993).

54. *Adoption of a Child by J.M.G.*, 632 A.2d at 553.

55. *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993).

56. *Adoption of Tammy*, 619 N.E.2d at 318. This analysis is also applicable to cases in which lesbian or gay couples seek together to adopt a child to which neither person has a biological relationship.

57. MASS. ANN. LAWS ch. 210, § 1 (Law. Co-op. 1994) (providing that if a married person petitioned for adoption, his or her spouse must join in the petition if competent to do so).

58. MASS. ANN. LAWS ch. 210, § 1 (Law. Co-op. 1994).

long as such a construction is consistent with legislative intent.⁵⁹ Thus, where the purpose of the statute was to promote the best interests of the child, and adoption by two unmarried individuals accomplishes this goal, the court would permit a plural construction of "person."⁶⁰

The second barrier to joint adoption was the mandatory termination requirement.⁶¹ The court dispensed with this requirement, reasoning that the legislature "obviously did not intend that a natural parent's legal relationship to its child be terminated when the natural parent is party to the adoption petition."⁶² Rather, "the termination provision . . . was intended to apply only when the natural parents (or parent) [were] not parties to the petition."⁶³ To apply the termination provision in the context of joint adoptions, reasoned another court, would yield "absurd results" and impose "obvious injustice," at odds with the purpose of the statute.⁶⁴

III. IMPLICATIONS OF GRANTING SECOND-PARENT ADOPTIONS

In a gradually growing number of cases, courts have legalized the relationship between the child and co-parent without disturbing the child's legal relationship with the natural parent. As a consequence, courts have effectively conferred legal status upon lesbian-headed family units,⁶⁵ and to a degree, legally recognized the relationship between the lesbian parents themselves.⁶⁶ Yet a large gap remains between the legal norms created by these opinions and popular social and political views opposed to such alternative family units. The tension created by this gap pervades several court opinions and creates a relatively fragile basis for this new right. Nevertheless, the legal norms created by these opinions may ultimately have the effect of generating social norms that will effectively narrow the gap and bolster family rights of lesbians and gays.

59. *Adoption of Tammy*, 619 N.E.2d at 319.

60. *Adoption of Tammy*, 619 N.E.2d at 318-319. *Accord In re K.M. & D.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995).

61. MASS. ANN. LAWS ch. 210, § 6 (Law. Co-op. 1994).

62. *Adoption of Tammy*, 619 N.E.2d at 321.

63. *Adoption of Tammy*, 619 N.E.2d at 321.

64. *In re M.M.D. & B.H.M.* 662 A.2d 837 (D.C. 1995).

65. *See In re Adoption of Evan*, 583 N.Y.S.2d 997, 1000 (N.Y. Sur. Ct. 1992) (recognizing that granting a second-parent adoption would mean "the creation of a legal family unit identical to the actual family setup.").

66. *See generally* William B. Rubenstein, *We Are Family: A Reflection on the Search for Legal Recognition of Lesbian and Gay Relationships* 8 J. L. & POL. 89 (1991).

A. Opposition to Lesbian Adoption

Majority public opinion continues to oppose gay and lesbian adoption, as well as the legal recognition of gay- and lesbian-headed families. In a 1993 survey, seventy percent of respondents objected to letting gays adopt children, seventy-three percent opposed same-sex marriage, and sixty percent opposed legal partnerships between same-sex couples.⁶⁷ A high proportion of those with such views reported holding them very strongly.⁶⁸

Conservative politicians and opinion leaders have made opposition to lesbian and gay households a *cause celebre* in their quest to safeguard "family values." For example, in opposing Roberta Achtenberg's appointment as Assistant Secretary of Housing and Urban Development, Sen. Jesse Helms repeatedly raised the fact that she had appeared in a parade with her lesbian partner and their son.⁶⁹ Another opponent of gay adoption, Robert Knight of the conservative Family Research Council, characterized second-parent adoption as "parental malpractice," asserting that it was "an attempt to hijack the moral capital of the mom-and-dad family."⁷⁰

Given strong and rather reflexive opposition to lesbian and gay parenting, it is quite remarkable that some courts have found these adoptions to be in children's best interests.⁷¹ Perhaps this can be explained by courts' reliance on relatively objective criteria when considering second-parent adoption petitions. Courts have based their findings

67. Joseph P. Shapiro et al., *Straight Talk about Gays*, U.S. NEWS & WORLD REPORT, July 5, 1993, at 42.

68. Shapiro et al., *supra* note 67.

69. *Crossfire* (CNN television broadcast, May 17, 1993).

70. Desda Moss, *Same-Sex Couples Taking Big Step: Parenthood*, USA TODAY, Nov. 10, 1993, at 12A. See also Rorie Sherman, *Court Lets Lesbian Adopt Partner's Child*, NAT'L. L. J., Aug. 23, 1993, at 6 (quoting Craig L. Parshall, president of Wisconsin Chapter of Rutherford Institute, saying, "[T]he values transmitted in lesbian and homosexual couples will be values that th[eir] sexual behavior is as appropriate as heterosexual. And I don't think our culture or our children ought to be taught that that behavior is a viable option.").

71. Cf. *Developments in the Law: Sexual Orientation and the Law*, *supra* note 2, at 1630-31 (explaining how many courts continue to apply presumptions against lesbians and gays in adoption cases); Shaista-Parveen Ali, Comment, *Homosexual Parenting: Child Custody and Adoption*, 22 U.C. DAVIS L. REV. 1009, 1013 (1989) (describing preconceptions of homosexuality militating against the granting of gay adoption). See also Achtenberg, *supra* note 14, § 1.04[2].

on case-by-case evaluations by independent investigators⁷² as well as on empirical studies of children raised by lesbian and gay parents.⁷³ From these sources, courts have concluded that the adoptions serve not only the children's legal and economic interests,⁷⁴ but also their emotional and psychological interests.⁷⁵ To be sure, formalizing a parental relationship that already exists in fact requires far less tolerance on the part of the courts than granting an adoption by a lesbian or gay couple of an unrelated child.⁷⁶ Nevertheless, the implication of these decisions is that popular objections to legal recognition of lesbian- and gay-headed families are at odds with the explicit public policy goal of protecting the best interests of children.

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72. These include state agencies and court-appointed guardians *ad litem* who conduct home studies. *See, e.g.,* Adoption of Tammy, 619 N.E.2d 315, 317 (Mass. 1993); Adoption of Evan, 583 N.Y.S.2d 997, 998 (N.Y. Sur. Ct. 1992).
 73. Several courts noted that all available research indicates that children do not suffer any measurable adverse developmental effects from being raised by lesbian or gay parents. *See, e.g.,* Adoption of a Child by J.M.G., 632 A.2d 550, 554 (N.J. Super. Ct. Ch. Div. 1993) (citing, inter alia, Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 CHILD DEV. 1025, 1031-32 (1992)). *See also* Adoption of Caitlin & Emily, 622 N.Y.S.2d 835, 840-41 (N.Y. Fam. Ct. 1994); *Adoption of Evan*, 583 N.Y.S.2d at 1001 n.1. *See generally*, Charlotte J. Patterson, *Adoption of Minor Children by Lesbian and Gay Adults: A Social Science Perspective*, 2 DUKE J. GENDER, LAW & POLICY 191, 196-205 (1995) (summarizing social science research on the development of children raised by lesbian and gay parents); Marc E. Elovitz, *Adoption by Lesbian and Gay People: The Use and Mis-Use of Social Science Research*, 2 DUKE J. GENDER, LAW & POLICY 207 (1995).
 74. *See, e.g.,* Adoption of Tammy, 619 N.E.2d at 320-21; *Adoption of Evan*, 583 N.Y.S.2d at 998-99. For example, the child would be eligible to receive the co-parent's health insurance and social security benefits; would have inheritance rights from the co-parent; would have the benefit and security of two legal parents willing to assume responsibilities; and, in the event of a separation, would have a legal right to child support from the co-parent.
 75. Courts have found the family environment provided by lesbian parents to be stable, nurturing, and healthy. *See, e.g.,* Adoption of Tammy, 619 N.E.2d at 316; *Adoption of a Child by J.M.G.*, 632 A.2d at 551-55; *Adoption of Evan*, 583 N.Y.S.2d at 998. Courts have also noted that it was important for the emotional well-being of children to preserve the filial ties between the children and the co-parents in the event of a separation or death of the natural mother. *Adoption of Tammy*, 619 N.E.2d at 320.
 76. *See In re M.M.D. & B.H.M.*, 662 A.2d 837 (D.C. 1995) (observing that granting a second-parent adoption "would formalize a parental relationship that [the child] recognizes in fact, and it would assure that both men are equally committed to her.").

B. Courts as Reluctant Architects

Faced with adoption statutes ill-suited to the diversity of contemporary family arrangements, courts have become uneasy architects of new statutory frameworks. Due to the distance between their decisions and popular views, some courts remain apprehensive about the relatively radical implications of granting second-parent adoptions. A New York court stated, "This court is aware that these cases present family units many in our society believe to be outside the mainstream of American family life."⁷⁷ And some judges remain opposed to granting such adoptions altogether, despite finding that they would be in the children's best interests. For example, in a dissenting opinion, Justice Lynch of the Massachusetts Supreme Judicial Court suggested that granting the petition would have the effect of "giving legal status to a relationship by judicial fiat that our elected representatives and the general public have, as yet, failed to endorse."⁷⁸ Indeed, given that adoption is a creature of statute, it is somewhat unexpected that courts have created a right contrary to majority public opinion without explicit authorization by state legislatures.

Due perhaps to their reticence about their potential role as social engineers, some courts have sought to distance themselves from the social implications of their decisions. For example, the Vermont Supreme Court stated:

It is not the courts that have engendered the diverse composition of today's families. It is the advancement of reproductive technologies and society's recognition of alternative lifestyles that have produced families in which a biological, and therefore a legal, connection is no longer the sole organizing principle. But it is the courts that are required to define, declare and protect the rights of children raised in these families

We are not called upon to approve or disapprove of the relationship between the appellants. Whether we do or not, the fact remains that Deborah has acted as a parent of B.L.V.B.

77. *Adoption of Caitlin & Emily*, 622 N.Y.S.2d 835, 841 (N.Y. Fam. Ct. 1994).

78. *Adoption of Tammy*, 619 N.E.2d at 322 (Lynch, J., dissenting). See also *In re Jacob*, Nos. 195, 196, 1995 WL 643833, at *19 (N.Y. Nov. 2, 1995) (Bellacosa, J., dissenting) (admonishing that "courts should not legislate under the guise of interpretation").

and E.L.V.B. from the moment they were born. To deny legal protection of their relationship, as a matter of law, is inconsistent with the children's best interests and therefore with the public policy of this state, as expressed in our statutes affecting children.⁷⁹

The court thus portrays itself as largely a passive actor, responding to exogenous technological and societal developments and applying the law according to established principles. The first sentences of both paragraphs demonstrate the court's efforts to distance itself from any part in legitimizing this new family unit. Another court sought to isolate the effect of its grant of a second-parent adoption: "The purpose of this adoption is not to create a nonmatrimonial legal status for the relationship between the petitioner and the child's biological mother. It is simply to give legal recognition to [the child's] relationship to her second parent"⁸⁰

C. Norm Creation

Yet this dichotomy evades the implications of the courts' decisions. While the *purpose* may be to give legal recognition to the child-second-parent relationship, the *effect* is to provide legal status to a previously unrecognized family unit. By so doing, the courts' opinions may in turn engender such alternative family units. Their opinions will guide not only lower courts, but also the courts of other states addressing this legal question. For example, an Illinois court acknowledged that while cases involving second-parent adoptions in other states are not binding, "they are instructive, and entitled to respect."⁸¹ In addition, as more courts in more states grant second-parent adoptions, more lesbian

79. Adoptions of B.L.V.B. & E.L.V.B., 628 A.2d 1271, 1276 (Vt. 1993).

80. *In re Camilla*, 620 N.Y.S.2d 897 (N.Y. Fam. Ct. 1994).

81. *In re the Petition of E.S. & R.L. to adopt M.L.S.*, No. 90 Coa 1202, 1994 WL 157949, at *3 (Ill. Cir. Ct. Mar. 14, 1994). See also *Adoption of Tammy*, 619 N.E.2d at 321 n.10 (citing as authority in support of granting a second-parent adoption the Vermont court's interpretation of a statutory provision similar to Massachusetts'). Nevertheless, courts have not always followed the opinions of other courts regarding second-parent adoptions, even those within the same jurisdiction. See, e.g., Mike McKee, *What Makes a Family? Wilson Cracks Down on Unmarried Adoptions, but It's Still Up to the Judge*, RECORDER, Apr. 6, 1995, at 1 (reporting that a California Superior Court Judge recently denied second-parent adoption on statutory grounds in a county (Alameda) that "is usually considered gay friendly for adoptions").

couples are likely to petition for them.⁸² For example, since the Massachusetts Supreme Judicial Court's rulings in *Adoption of Tammy* and *Adoption of Susan*, many additional lesbian second-parent adoption cases are being filed and granted throughout Massachusetts.⁸³

Decisions granting second-parent adoptions also embolden advocacy groups to expand the right. Lesbian-rights lawyers increasingly ask courts for opinions with greater precedential and normative weight. As Paula Ettelbrick of the National Center for Lesbian Rights explained:

In the beginning of the movement [for second-parent adoptions], we were keeping the cases quiet . . . But as each adoption was granted, since the only question was the best interest of the child, we felt more confident and have been asking judges to write opinions comparing the adoptions with the laws in their states.⁸⁴

Finally, the creation of this legal norm may in turn generate social norms more tolerant of alternative family units. A New Jersey court seemed sanguine about this prospect: "The court's recognition of this family unit through the adoption can serve as a step in the path towards the respect which strong, loving families of all varieties deserve."⁸⁵ It concluded, "We cannot continue to pretend that there is one formula, one correct pattern that should constitute a family in order to achieve the supportive, loving environment we believe children should inhabit."⁸⁶

CONCLUSION: THE FUTURE OF SECOND-PARENT ADOPTION

For the foreseeable future, second-parent adoption will likely remain a tenuous right. Not only are courts from different states divided on the issue, but so are courts within the same state. California offers a vivid illustration of the fragility and mutability of the right.

82. Cf. David W. Dunlap, *Support for Gay Adoptions Seems to Wane*, N.Y. TIMES, May 1, 1995, at A13 (reporting that New York court ruling that second-parent adoption not permitted by law had discouraged people considering such adoptions).

83. Josephine Ross, *Homestudies in Second-Parent Adoptions*, MASS. LAW. WKLY, Oct. 10, 1994, at 11.

84. Joseph F. Sullivan, *Court Backs Lesbian Right to Adopt a Partner's Child*, N.Y. TIMES, Aug. 11, 1993, at B5.

85. *Adoption of a Child by J.M.G.*, 632 A.2d 550, 552 (N.J. Super. Ch. Div. 1993).

86. *Adoption of a Child by J.M.G.*, 632 A.2d at 554-55.

Although California courts have granted second-parent adoptions for six to eight years⁸⁷ to an estimated three hundred lesbian and gay couples,⁸⁸ courts have yet to publish opinions legalizing such adoptions. Consequently, petitioning parents must endure the whim of a presiding judge who may or may not find such adoptions lawful.⁸⁹ Further, political forces continue to buffet this fragile right. In March 1995, Governor Pete Wilson reinstated a previous administrative policy that effectively requires state Social Service investigators to recommend against adoptions by unmarried couples.⁹⁰ Although judges have routinely ignored the policy and approved adoptions, including second-parent adoptions by lesbian and gay parents, judges are now facing increasing pressure to apply this presumption against lesbian and gay couples seeking to adopt.⁹¹

Legislative resolution of the issue is unlikely. Notwithstanding several judges' exhortations to state legislatures to address the issue of second-parent adoption,⁹² political bodies seem reluctant to do so.⁹³ Politically, this is a lose-lose situation: to legalize second-parent adoption would raise the ire of the majority of the public and powerful interest groups opposed to lesbian and gay parenting; and to pass a law forbidding such adoption would appear to penalize certain children and gratuitously discriminate against lesbians and gays. The political dividends of either decision would unlikely outweigh the costs. Hence,

87. Laurie K. Schenden, *Gay Couples Have Made Some Progress on the Adoption Front, with a Growing Number of Judges Allowing Partners to be Co-parent*, L.A. TIMES, Sept. 22, 1993, at E1.

88. Hanna, *supra* note 13 (quoting estimate by Kathryn Kendall, legal director for San Francisco-based National Council for Lesbian Rights).

89. See McKee, *supra* note 81, at 1.

90. The policy was rescinded in December 1994, only to be reinstated by Governor Wilson in March 1995. McKee, *supra* note 81, at 12.

91. McKee, *supra* note 81, at 12 (quoting Steve Sheldon, spokesperson for the conservative Anaheim-based Traditional Values Coalition, who accuses judges of ethically violating the state's public policy).

92. See, e.g., *In re Angel Lace M.*, 516 N.W.2d 678, 687 (Wis. 1994) (Geske J., concurring).

93. *In re Angel Lace M.*, 516 N.W.2d at 695 (Bablitch, J., dissenting) (asserting that his "experience as a former member of the legislature" told him that the legislature was highly unlikely to take up such a "sensitive" issue as second-parent adoptions). However, a subcommittee of the Illinois State Bar Association's Family Law Section has drafted a statutory amendment that would permit second-parent adoption, but the bar association has not included the measure in its legislative package. Hanna, *supra* note 13, at 5.

legislatures defer to the courts to deal with this political hot potato, while state politicians berate the courts for legislating from the bench.⁹⁴

In the meantime, the tension in the system will remain, and the right to second-parent adoption will wax and wane.⁹⁵ This situation raises a tactical dilemma for advocacy groups seeking to advance the right. To push for formal legalization, either through written opinion or legislation, potentially creates greater tension which ultimately could provoke a backlash: statutory override or judicial overrule of the existing *de facto* right.⁹⁶ Supporters must hope that evolving norms more tolerant of lesbian- and gay-headed families will mute countervailing forces and provide a foundation upon which to build a more permanent right. ♣

94. See, e.g., James Dao, *Ruling Lets Unwed Couples Adopt*, N.Y. TIMES, Nov. 3, 1995, at B16 (reporting that Gov. George E. Pataki said New York Court of Appeals overstepped its boundaries by ruling second-parent adoption permitted under New York adoption statute).

95. David W. Dunlap, *Support for Gay Adoptions Seems to Wane*, N.Y. TIMES, May 1, 1995, at A13 (quoting Tim Fisher, executive director of the Gay and Lesbian Parents Coalition International: "We had a long series of successes with second-parent adoptions, but recently we've had nothing but setbacks."). Cf. *In re Jacob*, Nos. 195, 196, 1995 WL 643833 (N.Y. Nov. 2, 1995) (legalizing second-parent adoption).

96. See Rubenstein, *supra* note 66; McKee, *supra* note 81, at 12.